

**Shur-Fab Metal, Inc. and Sheet Metal Workers'
International Association, Local Union 100,
AFL-CIO. Cases 5-CA-24429 and 5-CA-24447**

September 23, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND COHEN

Upon a charge filed by the Union in Case 5-CA-24429 on May 18, 1994, and in Case 5-CA-24447 on June 2, 1994, the General Counsel of the National Labor Relations Board issued a consolidated complaint on June 30, 1994, against Shur-Fab Sheet Metal, Inc., the Respondent, alleging that it has violated Section 8(a)(1), (3), and (4) of the National Labor Relations Act. Although properly served copies of the charges and consolidated complaint, the Respondent failed to file an answer.

On August 16, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On August 19, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated July 21, 1994, notified the Respondent that unless an answer was received by July 29, 1994, a Motion for Summary Judgment would be filed. On July 25, 1994, the Respondent's president, in a telephone conversation with the Region, admitted receiving the July 21, 1994 letter and the consolidated complaint, and asked for additional time to file an answer. On July 26, 1994, the General Counsel granted an extension of time to August 3, 1994, in which to file an answer. The Respondent has not filed an answer and has given no reason for its failure to do so.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Virginia corporation, with offices and places of business in Washington, D.C., and Centreville, Virginia, has been engaged as a heating, ventilation, and air-conditioning contractor. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, has performed services in the District of Columbia valued in excess of \$50,000, including work for the United States Government valued in excess of \$50,000 and, during that same time period, purchased and received in Washington, D.C., goods valued in excess of \$5000 directly from points outside the District of Columbia. During the same period, the Respondent, in conducting its business operations, has purchased and received at its Virginia facilities goods and services valued in excess of \$50,000 directly from points located outside the State of Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On or about April 25, 1994, the Respondent restrained and coerced its employees by creating an impression among its employees that their union and concerted activities were under surveillance by the Respondent; by interrogating employees as to who else was involved with the Union; by threatening employees by stating that the Respondent was "not going to put up with the Union"; by telling employees they were fired because of their union activities and stating the Respondent hoped "it had all been worth it" to the employees; by telling them that the Respondent did not need them anymore because it was downsizing because of "this union bull____"; and by stating to employees that the Respondent wasn't going to bid much work until all of this "f____ up s____ [union activity] was over."

On or about April 27, 1994, the Respondent restrained and coerced employees by telling them the Respondent was going to fire everyone except one guy, because he was "not going to have that f____ union taking over [its] company"; by stating that the employees were "lucky" the Respondent was even talking to them after what had happened with the Union; by asking employees if they had signed union cards and asking how they "voted" during a Board representation hearing; and by telling employees if they were reinstated it would reduce their pay rate because of their union and protected concerted activities.

On or about April 29, 1994, the Respondent restrained and coerced employees by asking them wheth-

er or not they were union members; by calling them "union a____h____"; by asking employees about the union activities of others; by stating that the Respondent would close down the business rather than become "union" and until all of "this union s____ was over"; and by promising to be more careful about who the Respondent picks and chooses to hire if it opens back up.

On or about April 25, 1994, the Respondent terminated its employees Robert Grimes and Jeffrey Grimes because they formed, joined, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities and because they testified at and participated in a representation hearing before the Board in Case 5-RC-14023.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, has been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and has been discriminating against employees for filing charges or giving testimony under the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3), and (4) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1), (3), and (4) by discharging Robert Grimes and Jeffrey Grimes, we shall order the Respondent to offer said discriminatees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharges, and to notify the discriminatees in writing that this has been done and that the discharges will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Shur-Fab Sheet Metal, Inc., Washington, D.C., and Centreville, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Restraining or coercing its employees by creating an impression among its employees that their union and concerted activities are under surveillance by the Respondent; by interrogating employees as to who else is involved with the Union; by threatening employees by stating that the Respondent is "not going to put up with the Union"; by telling employees they are fired because of their union activities and stating the Respondent hoped "it had all been worth it" to the employees; by telling them that the Respondent does not need them anymore because it is downsizing because of "this union bull____"; by stating to employees that the Respondent isn't going to bid much work until all of this "f____ up s____" [union activity] is over; by telling employees the Respondent is going to fire everyone except one guy because it is "not going to have that f____ union taking over [its] company"; by stating that the employees are "lucky" it is even talking to them after what had happened with the Union; by asking employees if they have signed union cards and asking how they "voted" during a Board representation hearing; by telling employees if they were reinstated it would reduce their pay rate because of their union and protected concerted activities; by asking them whether or not they are union members; by calling them "union a____h____"; by asking employees about the union activities of others; by stating that the Respondent would close down the business rather than become "union" and until all of "this union s____ was over"; and by promising to be more careful about whom the Respondent picks and chooses to hire if it opens back up.

(b) Terminating its employees because they form, join, or assist the Union or engage in other protected concerted activities, or to discourage employees from engaging in these activities, or because they testify at or participate in a representation hearing before the Board.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Robert Grimes and Jeffrey Grimes immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them

in the manner set forth in the remedy section of this decision.

(b) Expunge from its files any and all references to the unlawful discharges, and notify the discriminatees in writing that this has been done and that the discharges will not be used against them in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facilities in Washington, D.C., and Centreville, Virginia, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT restrain or coerce our employees by creating an impression among them that their union or concerted activities are under surveillance; by interrogating employees as to who else is involved with the Union; by threatening employees by stating that we are "not going to put up with the Union"; by telling em-

ployees they are fired because of their union activities and stating we hoped "it had all been worth it" to the employees; by telling them that we do not need them anymore because we are downsizing because of "this union bull_____"; by stating to employees that we aren't going to bid much work until all of this "f_____ up s_____" [union activity] was over; by telling employees we are going to fire everyone except one guy because we are "not going to have that f_____ union taking over our company"; by stating that the employees are "lucky" we are even talking to them after what had happened with the Union; by asking employees if they have signed union cards or asking how they "voted" during a Board representation hearing; by telling employees if they were reinstated we would reduce their pay rate because of their union or protected concerted activities; by asking them whether or not they were union members; by calling them "union a_____ h_____"; by asking employees about the union activities of others; by stating that we would close down the business rather than become "union" and until all of "this union s_____ was over"; and by promising to be more careful about who we pick and choose to hire if we open back up.

WE WILL NOT terminate our employees because they form, join, or assist the Union or engage in other protected concerted activities, or to discourage employees from engaging in these activities, or because they testify at or participate in a representation hearing before the Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Robert Grimes and Jeffrey Grimes immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them with interest.

WE WILL expunge from our files any and all references to the unlawful discharges, and notify the discriminatees in writing that this has been done and that the discharges will not be used against them in any way.

SHUR-FAB SHEET METAL, INC.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."